

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SANTIAGO COLIN-MOLINA,

Petitioner,

v.

NATALIE ASHER, et al.,

Respondents.

Case No. C15-666-RSL-BAT

**REPORT AND  
RECOMMENDATON**

Santiago Colin-Molina, proceeding through counsel, filed a habeas petition pursuant to 28 U.S.C. § 2241 and a motion for preliminary injunction, both of which challenge the lawfulness of his detention by U.S. Immigration and Customs Enforcement (“ICE”) and seek his release from immigration detention or a bond hearing. Dkts. 1 & 2. Mr. Colin-Molina is subject to a reinstated order of removal, and his application for withholding of removal to Mexico is pending. *See id.* He has been detained by ICE since January 2015.<sup>1</sup> Dkt. 2-1 at 6-9.

Respondents have moved to dismiss, arguing that Mr. Colin-Molina’s request for release from immigration detention or a bond hearing is premature. Dkt. 9. Respondents point out that in a number of factually analogous cases, judges in this judicial district have concluded that (1)

<sup>1</sup> The record does not clearly establish the date petitioner was arrested. Petitioner asserts that he was arrested on January 3, 2015. *See* Dkt. 1. The narrative section of the I-213 Record of Deportable Inadmissible Alien supports this claim. Dkt. 2-1 at 8. However, the I-213 is dated January 29, 2015, *id.* at 6, and respondents maintain that based on a review of ICE records, January 29, 2015, is the day Mr. Colin-Molina was arrested, Dkt. 9 at 2 n.1.

1 the petitioners are not entitled to an order of release under *Zadvydas v. Davis*, 533 U.S. 678, 701  
2 (2001), because there is no evidence that if their application for withholding of removal is  
3 denied, their native country will not accept them, and (2) the petitioners are entitled to a bond  
4 hearing if they have been detained for more than six months. Dkt. 9 at 1-2 (collecting cases).  
5 Respondents disagree with the courts' conclusion that petitioners in this type of procedural  
6 posture are entitled to bond hearings, but maintain that even if the courts' recent findings are  
7 applied to Mr. Colin-Molina's case, he is not entitled to release because there is no evidence that  
8 Mexico will not accept him if withholding of removal is denied, and he is not entitled to a bond  
9 hearing because he has not yet been detained for more than six months. Dkt. 9 at 2.

10 In response, Mr. Colin-Molina asserts—without citation to authority—that this Court has  
11 jurisdiction to conduct a hearing and release him, and asks the Court to do so. Dkt. 10 at 2. In  
12 the alternative, he asks “that these proceedings be stayed until after the six months has passed  
13 and the Petitioner has had a hearing before the Immigration Judge regarding his request for  
14 bond.” *Id.* at 3.

15 Mr. Colin-Molina's request that the Court conduct a bond hearing is unsupported and  
16 should be rejected. Any bond hearing should be conducted by an immigration judge, not a  
17 federal district court. Furthermore, although Mr. Colin-Molina is correct that the Court has  
18 jurisdiction to order his release, he fails to show that his detention is indefinite within the  
19 meaning of *Zadvydas*, 533 U.S. at 701, and therefore his request for release should be denied.

20 However, if ICE continues Mr. Colin-Molina's detention after his 180-day custody  
21 review and his release or removal is not imminent, he will be entitled to a bond hearing. *See*  
22 *Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 (9th Cir. 2011); *Casas-Castrillon v. Dep't of*  
23 *Homeland Sec.*, 535 F.3d 942, 951 (9th Cir. 2008). Because Mr. Colin-Molina will reach the

1 180-day mark in his detention at some point in July 2015, it makes little sense to grant either  
2 respondents' motion to dismiss or Mr. Colin-Molina's request for a stay. Instead, the Court  
3 recommends as follows:

4 (1) The parties should be ordered to file a joint status report on or before **August 7,**  
5 **2015**, addressing the result of Mr. Colin-Molina's 180-day custody review by ICE and whether a  
6 bond hearing has occurred or been scheduled;

7 (2) Respondents' motion to dismiss, Dkt. 9, should be **DENIED** without prejudice to  
8 being renewed at a later date; and

9 (3) Petitioner's motion for preliminary injunction, Dkt. 2, should be **DENIED**.

10 A proposed order accompanies this Report and Recommendation.

11 This Report and Recommendation is not an appealable order. Therefore a notice of  
12 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the  
13 assigned District Judge enters a judgment in the case. Objections, however, may be filed and  
14 served upon all parties no later than **July 13, 2015**. The Clerk should note the matter for **July**  
15 **17, 2015**, as ready for the District Judge's consideration if no objection is filed. If objections are  
16 filed, any response is due within 14 days after being served with the objections. A party filing an  
17 objection must note the matter for the Court's consideration 14 days from the date the objection  
18 is filed and served. The matter will then be ready for the Court's consideration on the date the  
19 response is due. Objections and responses shall not exceed eight pages. The failure to timely  
20 object may affect the right to appeal.

21 DATED this 29<sup>th</sup> day of June, 2015.

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BRIAN A. TSUCHIDA  
United States Magistrate Judge

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